



# PREPROPOSAL STATEMENT OF INQUIRY

**CR-101 (October 2017)  
(Implements RCW 34.05.310)**

Do **NOT** use for expedited rule making

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DATE: June 17, 2020

TIME: 8:11 AM

WSR 20-13-094

**Agency:** Washington Department of Fish & Wildlife (WDFW)

**Subject of possible rule making:**

The department is considering new rules to implement the Fishway, Flow and Screening statute (RCW 77.57), and the 2019 Engrossed Substitute House Bill 1109 (Laws of 2019, chapter 415), which became effective on May 21, 2019.

**Statutes authorizing the agency to adopt rules on this subject:**

RCWs 77.04.012, 77.12.047, 77.57.010, 77.57.030, 77.57.040, 77.57.050, 77.57.060, 77.57.070, 43.05.100, and 43.05.120; ESHB 1109 (Laws of 2019, chapter 415)

**Reasons why rules on this subject may be needed and what they might accomplish:**

New rules are necessary to fully implement RCW 77.57, consistent with recommendations of the Southern Resident Orca Task Force. The ultimate goal of the new rules is to increase the availability of salmon for southern resident orcas.

In November 2018, the Southern Resident Orca Task Force published its report identifying lack of prey as a key threat to Southern Resident Orcas. Contributing to this threat are development activities and fish passage barriers like impassable dams, tide gates, screens, and culverts that have reduced habitat available for salmon and forage fish.

Recommendation three of the report endorsed agencies to apply and enforce laws that protect habitat. Specifically, the task force noted that the governor should direct WDFW to develop rules to fully implement RCW 77.57.

**Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies:**

WDFW is the sole authority regulating fishways and screening under Chapter 77.57 RCW, and the only state agency that regulates fishways and screening solely for the protection of all fish life.

The U.S. Army Corps of Engineers, Washington Department of Ecology, Washington Department of Natural Resources, Washington State Parks, and local governments also regulate certain aspects of fishways and screening under their own authorities.

The National Marine Fisheries Service and U.S. Fish and Wildlife Service regulate the "take" of threatened or endangered species listed under the federal Endangered Species Act.

Tribes regulate fisheries and certain aspects of construction projects on tribal lands. State, federal, and local government entities will be invited to comment on draft rules during the rulemaking process.

WDFW will conduct government-to-government consultation with tribes.

**Process for developing new rule (check all that apply):**

- Negotiated rule making
- Pilot rule making
- Agency study
- Other (describe)

**Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting:**

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